

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 230 of 1995.

Judgement reserved on: 4.5.2007

Date of decision: 18.6.2007.

Jalam Singh

.....Appellant

Vs.

State of Himachal Pradesh

.... Respondent.

Coram

The Hon'ble Mr. Justice Kuldeep Singh, Judge.

Whether approved for reporting? No

**For the Appellant : Mr.G.D. Verma, Sr. Advocate with
Mr. B.C. Verma, Advocate.**

**For the Respondent : Mr. M.L. Chauhan, Additional
Advocate General.**

Kuldeep Singh, Judge.

This appeal is directed against the judgment, decree dated 14.3.1995 passed by learned District Judge, Shimla in C.A. No.131-S/13 of 1993, reversing judgment, decree dated 31.7.1993 passed by learned Sub Judge Ist Class (II) Rohru, District Shimla in Case No.3/1 of 1989. The parties are referred in the same manner as in the trial Court.

2. The facts in brief are that plaintiff filed a suit for declaration that he is owner of 225 scants bearing Khudan Mark ZT and plaintiff is entitled to sale proceed of the same. The further facts as pleaded by the plaintiff are that he purchased private trees of deodar, kail and rai equal to 773.44 Cum in Bashla Range earlier

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

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Tikkar range of Rohru Forest Division . The felling order was issued on 30.4.1981. The converted timber was carried to Samala (Rohru) by trucks for further transportation. The Export Permits for carrying 8179 scants having 17543.70 Cft. were issued. The plaintiff due to bad weather conditions could not export timber despite extension granted for exporting the timber. Ultimately due to shortage of trucks, 225 scants could not be transported.

3. There was campaign against illicit felling of trees at that time. The flying squad of Police/Forest took into possession 225 scants of plaintiff bearing Khudan Mark ZT in the absence of plaintiff from Timber Depot of plaintiff at Samala where plaintiff had stacked the timber for further transportation.

4. That 225 scants were owned by plaintiff and these scants were illegally taken away and were not restored to the plaintiff despite repeated requests. The plaintiff submitted an application dated 4.2.1987 to learned Sub Divisional Judicial Magistrate, Rohru for releasing 225 scants who vide order dated 6.7.1987 ordered the auction of the timber and sale proceeds were ordered to be deposited in the Govt. Treasury.

5. It has further been alleged that two false cases under Section 33 of the Indian Forest Act were filed against the plaintiff which were dismissed by the Court on 26.7.1988. The plaintiff has issued notice under Section 80 CPC and ultimately on 4.1.1989 filed a suit for declaration that plaintiff being rightful owner of 225 scants as such he is entitled to the sale proceeds thereof.

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6. The suit has been contested by the defendant in which preliminary objections of maintainability, limitation, valuation, lack of cause of action have been taken. On merits, It has however, been admitted that plaintiff was issued Export Permits No.175/81-82 and 136/82-83 for 8179 scants having 17543.70 cft. . The plaintiff did not lift entire timber of Export Permit NO.136/82-83 and some timber of this permit was lying at Samala Depot. The Export Permit of the balance timber was not allowed because the firm of the plaintiff was indulged in illicit felling of Govt. trees in C.No.30(d). The Damage Reports No.30 & 31 dated 12.2.1982 & 13.2.1982 for illicit felling by plaintiff were issued, an amount of Rs.40,805/- on account of compensation was also raised against the plaintiff.

7. On 25.6.1982 at the time of seizing the timber more then 2644 scants were lying in the Depot of the plaintiff firm at Samala, 225 scants were seized by Forest Ranger on 25.6.1982 from Samala Depot under the orders of the Divisional Forest Officer, Rohru. This timber was seized because this was extracted by the plaintiff firm out of the trees illicitly cut in C.No.30(d) and was mixed with private sale timber. The seized timber was distinctly different from the private sale timber being freshly converted whereas the private sale timber was old. The seized timber ultimately was handed over to the H.P. State Forest Corporation for auction as per the order of the learned Sub Divisional Judicial Magistrate, Rohru. The challans were submitted in the Court on the basis of damage reports which were dismissed on 26.7.1988, on the ground of limitation and not on merits with the order that the sale proceeds of

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the disputed property be released to the rightful owner after determination of the title through the Court of Competent jurisdiction. In brief the defendant denied the claim of the plaintiff.

8. The trial Court decreed the suit on 31.7.1993 against which appeal was filed which has been allowed by learned District Judge and hence plaintiff is in second appeal.

9. The appeal has been admitted on following Substantial Questions of Law:

1. *Whether despite having Khudan marks of the plaintiff over the seized property, the same cannot be held to be belonging to the Appellant?*
2. *Whether the Respondents have claimed Title and proved that the property as seized by the Flying Squad, belong to them.*
3. *Whether the Appellate court has failed to consider pleadings of the parties and acted illegally by failure to appreciate and consider the documentary and oral evidence on record.*

10. I have heard the learned counsel for the parties and have also gone through the record.

11. The learned Senior counsel for the plaintiff has submitted that 225 scants in question belonged to plaintiff. These scants were having Khudan Mark ZT. The defendant has failed to prove that 225 scants were illegally extracted by plaintiff. It has not been proved that 225 scants were converted by plaintiff from trees illegally cut by him. On the contrary learned Additional Advocate General has submitted that 225 scants were illicitly cut by plaintiff. There is presumption of ownership of the forest produce in favour

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of the State under Section 69 of the Indian Forest Act. The suit filed by plaintiff is not maintainable. The plaintiff is not entitled to sale proceeds of 225 scants sold under the Court order.

Substantial Questions of Law 1 to 3

12. All these substantial questions of law are being disposed of collectively in view of the fact that these are interconnected.

13. The case of the plaintiff is that from private sale of trees, he converted timber for which he even obtained Export Permit but he could not transport the timber due to bad weather conditions and shortage of trucks. The timber was lying in his Depot but the defendant wrongly and illegally removed 225 scants on 25.6.1982 in his absence. The 225 scants were legal and not illegal. The Khudan Mark ZT of plaintiff was very much on the timber, which has been admitted by defendant, therefore, it proves that 225 scants were not illegal but legal property of the plaintiff. The submission of learned Senior counsel is attractive but on close scrutiny of the material on record it is found merit less.

14. The case of the plaintiff is that 225 scants which were removed by the defendant on 25.6.1982 from the Depot of the plaintiff was part of left over scants for which Export Permits were issued by the Authorities but plaintiff could not transport the timber because of bad weather and shortage of trucks. The plaintiff has placed on record Export Permit 175/81-82 dated 8.12.1981 Ex.PA. The timber of this permit has been shown having Property Mark RZP and Khudan Mark ZT. The CCF HP has issued Standing Order No.Ft.12-432/67(CFD) dated

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2.2.1981 in supersession of all previous instructions issued on the subject read with the provisions of the Agreement deed. The instruction No.(viii) of the standing order is as follow:-

“Export permit will be issued by the DFO as per proforma attached with the export permit. This permit will be valid for specified period. No request for issue of another export permit will be entertained till all the timber against the earlier export permit has been exported. The permit will contain an abstract showing the timber as scants, hakrie logs etc. by number and volume. The exact contents covered by the export permit by the RO and having a facimile of the property, khudan and hammer mark”.

This means, at the level of export permit, not only khudan mark but there should be valid property mark and hammer mark of the timber. It is not the case of plaintiff that with respect of 225 scants in question he was having property mark and hammer mark also. The pleaded case of the plaintiff is that 225 scants were having khudan mark ZT. Simply on the basis of khudan mark ZT on 225 scants, it cannot be held that these scants were owned by plaintiff.

15. The plaintiff has not explained Property Mark and hammer mark of 225 scants in question. In absence of pleadings and proof of Property Mark and hammer mark of 225 scants in favour of plaintiff it can not be said that 225 scants were of the plaintiff.

16. There is presumption of ownership of Forest produce in favour of the State under Section 69 of the Indian Forest Act, this

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presumption has not been rebutted by plaintiff. There is no evidence on record to show that the plaintiff was the owner of the 225 scants removed on 25.6.1982. The defence of the defendant is plausible that plaintiff illicitly cut timber from the near by area and mixed illicit cut timber with the private sale timber. During raid the illicit 225 scants were separated out and were rightly taken away by the authorities. The plaintiff has not rebutted the presumption of ownership in favour of State of forest produce under Section 69 of the Indian Forest Act. This is additional ground to hold that plaintiff was not the owner of aforesaid 225 scants.

17. The plaintiff has filed suit for declaration that he is owner of 225 scants and is entitled to sale proceed of the same. The frame of the suit shows that it is a simple suit for declaration without consequential relief. On behalf of plaintiff it has been submitted that pleadings are to be interpreted liberally and the suit is not only for declaration but for consequential relief also.

18. The perusal of the plaint shows that suit has been valued at Rs.500/- and Rs.19.50 paise respectively. The suit has not been valued separately for the purpose of court fee and jurisdiction for relief of declaration and consequential relief. In other words the suit is simply for declaration that the plaintiff is owner of 225 scants and is entitled to sale proceed thereof. It has come on record that in the present case, the 225 scants were already sold and therefore, the plaintiff was not only required to file suit for declaration but was also required to seek consequential

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relief for recovery/refund of sale proceeds. The simple suit for declaration where consequential relief is required is not maintainable under Section 34 of the Specific Relief Act, 1963. Therefore, the present suit for declaration only is not maintainable.

19. The result of above discussion is that learned District Judge has rightly appreciated the material on record and has come to right conclusion, which does not require interference. The defendant is the owner of aforesaid 225 scants. No case of interference has been made out by the plaintiff. Hence, substantial questions of law No.1 to 3 are decided against the plaintiff and in favour of the defendant.

20. In view of above discussion, the appeal is dismissed with no order as to costs.

June 18, 2007
(sks)

(Kuldip Singh)
Judge.